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Attorneys for Defendant/Counter-Plaintiff,
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
 CERAMICS, INC. dba GLIDEWELL
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.
 SACV11-01309-DOC(ANx)

**KEATING'S OBJECTIONS
 TO EVIDENCE SUBMITTED
 BY GLIDEWELL'S DENTIST
 WITNESSES IN SUPPORT
 OF ITS MOTIONS FOR
 PARTIAL SUMMARY
 JUDGMENT**

Honorable David O. Carter

I. INTRODUCTION

Defendant Keating Dental Arts, Inc. (“Keating”) hereby objects to Glidewell’s Exhibits A-F & Exhibit Q, the Declarations of Drs. Gregory Doneff, Stuart R. Newman, Howard S. Cohen, Spencer D. Luke, Thomas E. Bell, Kent Toca, and Terence J. Michiels. The declaration portions objected to are inadmissible, and Keating requests that they not be considered as part of the record in deciding Glidewell’s motions for partial summary judgment. For the sake of brevity, as all of the dentists’ declarations follow the same general structure and are subject to the same objections, they will be addressed substantially simultaneously.

After this court denied Glidewell’s motion to amend the scheduling order [DOC #], Glidewell has continued to produce information and witnesses in violation of F.R.C.P. 37(c). In its motions for summary judgment, Glidewell has relied on several witnesses (including Drs. Bell, Cohen, Doneff, Luke, Michiels, Newman, Toca) not previously identified in a timely served initial disclosure or discovery response.

Glidewell’s actions are unacceptable and flagrantly disregard this Court’s Order by attempting to go behind the Court’s back to continue discovery and production. F.R.C.P. 37(c) (If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), **the party is not allowed to use that information or witness** to supply evidence on a motion) (emphasis added).

Therefore, Defendant respectfully requests that this Court exclude all of the Plaintiff’s untimely information and witnesses because such evidence violates both the Court’s Order and the Federal Rules of Civil Procedure.

II. OBJECTIONS

A. Objections to the Declarations of Drs. Bell, Cohen, Doneff, Luke, and Michiels, Newman, and Toca Submitted By Glidewell

	Testimony	Objection
	<p>The entirety of each of the following:</p> <ul style="list-style-type: none"> • Exhibit A: Declaration of Dr. Gregory Doneff • Exhibit B: Declaration of Dr. Stuart R. Newman • Exhibit C: Declaration of Dr. Howard S. Cohen • Exhibit D: Declaration of Dr. Spencer D. Luke • Exhibit E: Declaration of Dr. Thomas E. Ball • Exhibit F: Declaration of Dr. Kent Toca • Exhibit Q: Declaration of Dr. Terence J. Michiels 	<p>Witnesses not previously identified during discovery.</p> <p>Improper “new” evidence not included in Plaintiff’s Initial Disclosures or a timely served Amended Initial Disclosure and submitted in violation of this Court’s denial of Plaintiff’s <i>Ex Parte</i> Motion to Amend the Scheduling Order and F.R.C.P. 37(c).</p>
	<p style="text-align: center;">¶ 3</p>	<p>Irrelevant (Fed. R. Evid. 402) (as to the following:</p> <ul style="list-style-type: none"> • Bell’s reference to regularly speaking with other dentists about the quality of Glidewell's “BruxZir” crowns and bridges; • Cohen’s reference to speaking with other dentists in his community about Glidewell’s “BruxZir” crowns and bridges; • Doneff’s reference to speaking with other dentists about

1		Testimony	Objection
2			Glidewell's "BruxZir" crowns and bridges;
3			<ul style="list-style-type: none"> • Luke's reference to speaking with other dentists, including his own dentist, about Glidewell's "BruxZir" crowns and bridges;
4			<ul style="list-style-type: none"> • Michiel's reference to speaking with other dentists, including his father (an orthodontist) and several colleagues, about Glidewell's "BruxZir" crowns and bridges.
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11		¶ 3 (Cohen)	Lack of personal knowledge (as to whether Glidewell pioneered the use of zirconia crowns) (<i>See</i> Fed. R. Evid. 602) ("A witness may not testify to matter less evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.")
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17		¶ 4	Hearsay (Fed. R. Evid. 802) (as to the following statement, made by Bell, Cohen, Doneff, Luke, and Michiels, which relies on hearsay:
18			<ul style="list-style-type: none"> • "through my various communications with other dentists, I am aware that other dentists have known, that the "BruxZir" mark is a brand or trademark that signifies a single source of zirconia crowns and bridges and zirconia material from which those products are made;
19			,
20			and as to the following statement,
21			made by each dentist, which relies on
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1		Testimony	Objection
2			hearsay:
3			<ul style="list-style-type: none"> through my various communications with other dentists, I am aware that other dentists have known, that the BRUXZIR mark is a brand or trademark associated with Glidewell Labs.
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8			Lack of personal knowledge (as to the knowledge of other dentists) (<i>See</i> Fed. R. Evid. 602) (“A witness may not testify to matter less evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”).
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10			Improper opinion by a lay witness. Fed R. Evid. 701.
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12			Speculation (<i>See</i> Fed. R. Evid. 602); Lacks Foundation (<i>See</i> Fed. R. Evid. 602)
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18		¶ 5	Hearsay (Fed. R. Evid. 802) (as to the following statement, made by Bell, Cohen, Doneff, Luke, and Michiels, which relies on hearsay:
19			<ul style="list-style-type: none"> “through my various communications with other dentists, I am aware that other dentists have known, that the “BruxZir” mark is a brand or trademark that signifies that Glidewell Labs was the source of a zirconia crown or bridge marketed under that trademark
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28			Lack of personal knowledge (as to

1		Testimony	Objection
2			the knowledge of other dentists) (<i>See</i> Fed. R. Evid. 602) (“A witness may
3			not testify to matter less evidence is
4			introduced sufficient to support a
5			finding that the witness has personal
6			knowledge of the matter.”)
7			Improper opinion by a lay witness.
8			Fed R. Evid. 701.
9			Speculation (<i>See</i> Fed. R. Evid. 602);
10			Lacks Foundation (<i>See</i> Fed. R. Evid.
11			602)
12		¶ 6	Hearsay (Fed. R. Evid. 802) (as to the
13			following statement, made by Bell,
14			Cohen, Doneff, Luke, and Michiels,
15			which relies on hearsay:
16			• through my various
17			communications with other
18			dentists, I am aware that other
19			dentists have known, that the,
20			“BruxZir” Mark is a brand or
21			trademark that signifies that
22			Glidewell Labs was/is the
23			source of zirconia material
24			(from which zirconia crowns
25			and bridges are made)
26			marketed under that trademark
27			Lack of personal knowledge (as to
28			the knowledge of other dentists) (<i>See</i>
			Fed. R. Evid. 602) (“A witness may
			not testify to matter less evidence is
			introduced sufficient to support a
			finding that the witness has personal
			knowledge of the matter.”)
			Improper opinion by a lay witness.

1		Testimony	Objection
2			Fed R. Evid. 701.
3			Speculation (<i>See</i> Fed. R. Evid. 602);
4			Lacks Foundation (<i>See</i> Fed. R. Evid.
5			602)
6		¶ 7	Hearsay (Fed. R. Evid. 802) (as to the
7			following statement, made by Bell,
8			Cohen, Doneff, Luke, and Michiels,
9			which relies on hearsay:
10			<ul style="list-style-type: none"> • and the other dentists with
11			whom I regularly
12			communicate, use the term
13			“bruxer” exclusively to refer
14			to a person who suffers from
15			bruxism; i.e., habitual and
16			destructive grinding of the
17			teeth and clenching of the jaw.
18			Lack of personal knowledge (as to
19			the knowledge of other dentists) (<i>See</i>
20			Fed. R. Evid. 602) (“A witness may
21			not testify to matter less evidence is
22			introduced sufficient to support a
23			finding that the witness has personal
24			knowledge of the matter.”)
25			Speculation (<i>See</i> Fed. R. Evid. 602);
26			Lacks Foundation (<i>See</i> Fed. R. Evid.
27			602)
28		¶ 8	Hearsay/Conclusion Based on
			Hearsay (Fed. R. Evid. 802) (as to the
			following statement, made Bell,
			Doneff, Luke, which relies on
			hearsay:
			<ul style="list-style-type: none"> • the terms “bruxer,” “bruxer
			crown,” “bruxzir,” and
			“bruxzir crown” are not terms

1		Testimony	Objection
2			that I, nor the dentists I
3			communicate with, use to refer
4			to zirconia crowns and bridges
5			as a type or category of
6			product generally.
7			,
8			and the following statement, made by
9			Cohen, which relies on hearsay:
10			<ul style="list-style-type: none"> the terms “bruxer,” “bruxer
11			crown” are not terms that I, nor
12			the dentists I communicate
13			with, use to refer to zirconia
14			crowns and bridges as a type or
15			category of product generally.
16			Lack of personal knowledge (as to
17			the knowledge of other dentists) (<i>See</i>
18			Fed. R. Evid. 602) (“A witness may
19			not testify to matter less evidence is
20			introduced sufficient to support a
21			finding that the witness has personal
22			knowledge of the matter.”)
23			Speculation (<i>See</i> Fed. R. Evid. 602);
24			Lacks Foundation (<i>See</i> Fed. R. Evid.
25			602)
26			Hearsay/Conclusion Based on
27			Hearsay (Fed. R. Evid. 802) (as to the
28			following statement, made by Bell,
			which relies on hearsay:
			<ul style="list-style-type: none"> the dentists that I communicate
			with, use the terms “zirconia
			crowns,” “all zirconia crowns,”
			“full zirconia crowns,” or
			“solid zirconia crowns.”
			,
			as to the following statement, made
			by Cohen, which relies on hearsay:

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	Testimony	Objection
		<ul style="list-style-type: none"> • “. . . the dentists that I communicate with, use the term “solid zirconia crowns.” Moreover, I and the dentists with whom I regularly communicate, do not use the term “BRUXZIR” or “BRUXZIR crown” to identify zirconia crowns other than those produced by Glidewell Labs or produced under the authorization of Glidewell Labs.” <p>as to the following statement, made by Doneff, Luke & Michiels, which relies on hearsay:</p> <ul style="list-style-type: none"> • “. . . the dentists that I communicate with, use the terms “zirconia crowns,” “all zirconia crowns,” “monolithic zirconia crowns,” “full zirconia crowns,” or “solid zirconia crowns.” <p>Lack of personal knowledge (as to the perennial word selection other dentists) (<i>See</i> Fed. R. Evid. 602) (“A witness may not testify to matter less evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”)</p> <p>Speculation (<i>See</i> Fed. R. Evid. 602); Lacks Foundation (<i>See</i> Fed. R. Evid. 602)</p>

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III. CONCLUSION

Based upon the objections that Keating has made with respect to the above-identified Declarations of Drs. Gregory Doneff, Stuart R. Newman, Howard S. Cohen, Spencer D. Luke, Thomas E. Bell, Kent Toca, and Terence J. Michiels and portions of the same, Keating respectfully requests that the Court strike and not consider the identified declarations and portions thereof in deciding Glidewell's motion for partial summary judgment.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 26, 2012 By: /s/ Lynda J. Zadra-Symes

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